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In re Application of
Tsuyoshi Asano
Application No. 09/988,499
Filed: November 19, 2001
Attorney Docket No. 990891A

OFFICE OF PETITIONS

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition filed July 21, 2004, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/JP98/05962, filed December 25, 1998).

The petition under 37 CFR 1.78 (a) (3) is **dismissed** as moot.

The Amendment to add a claim for priority to PCT Application No. PCT /JP98/05962 reads as follows:

"This application is a Continuation in Part of prior application Serial No. 09/367,936, filed August 24, 1999, now abandoned, which was the 35 USC 371 National Stage of International Application No. PCT/JP98/05962, filed December 25, 1998."

As set forth in MPEP 1893.03(c), page 1800-149, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate.

It is noted that the Filing Receipt received by petitioner did not include the fact that Application No. 09/367,936 is the national stage of international Application No. PCT/JP98/05962. Accordingly, a corrected Filing Receipt accompanies this decision on petition.

In view of the dismissal of the instant petition as moot, the \$1330.00 petition fee submitted on July 21, 2004, is unnecessary and will be refunded to petitioner's Deposit Account No. 01-2340.

Any questions concerning this decision on petition may be directed to Retta Williams at (703) 306-5594.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this decision on petition may be directed to Retta Williams at (571) 272-3229.

This matter is being referred to referred to Technology Center Art Unit 1732.


Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt